

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

MARY A. DIGGS,

Plaintiff,

v.

Civil Action No.: 6:17-cv-00026

WAL-MART STORES EAST, LP,
and
WAL-MART STORES, INC.,
doing business as Wal-Mart
Supercenter #2565
197 Madison Heights Square
Madison Heights, Virginia 24572
a/k/a Wal-Mart, a/k/a Wal-Mart Store
a/k/a Wal-Mart Supercenter,

Defendants.

PLAINTIFF'S MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE

PURSUANT TO RULE 41(a)(2)

Counsel for plaintiff, in this Motion for Voluntary Dismissal pursuant to Federal Rules of Civil Procedure Rule 41(a)(2), represents the following to this Honorable Court:

1. This negligence action arises out of a slip-and-fall incident that occurred on or about May 9, 2015 at the Wal-Mart store in Madison Heights, Virginia.
2. Plaintiff filed this cause in the Amherst, Virginia Circuit Court on February 24, 2017 for \$500,000.
3. Defendants removed this case to this Court, which final removal order was entered in the Amherst Circuit Court on April 5, 2017.

4. After the end of the discovery period in this Court, defendants filed their motion for Summary Judgment on January 18, 2018, and plaintiff filed her response on February 9, 2018, which has not yet been heard or ruled on by this Court.
5. Defendant has not pleaded any counterclaims.
6. Plaintiff has neither taken a non-suit in Amherst County Circuit Court, nor a voluntary dismissal in this Court;
7. Counsel for plaintiff, prior to the removal of this case, had no prior experience litigating cases in either this or any federal court.
8. Counsel for plaintiff contends that there are procedural issues in this case relating to pre-trial order deadlines, expert witness disclosures, and discovery issues that could prohibit this case from actually being decided on the merits. This Court has previously pointed out to counsel for plaintiff that federal courts generally favor disposing of cases on the merits. *See Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 6161 F.3d413, 418 (4th Cir. 2010); *Laber v. Harvey*, 438 F.3d 404, 426 (4th Cir. 2006).
9. Defendants are not yet entitled to a dismissal on the merits, trial in the matter is over a month away, and counsel for plaintiff is unaware of the issuance of any subpoenas for trial; thus, defendant would not suffer any “clear legal prejudice” nor would there be any “manifest injustice” should the Court grant this Motion.
10. Counsel for defendants have indicated to counsel for plaintiff that any request for a Voluntary Dismissal without prejudice pursuant to Rule 41(a)(2) would not be agreed-to.

WHEREFORE, plaintiff in this cause respectfully prays this Honorable Court for an order dismissing this case from the docket, without prejudice, and with leave to refile before the end of the statutory period as prescribed by law.

Respectfully,

By: /s/ Gary L. Straw
Counsel

Gary L. Straw (VSB No. 79118)
STRAW LAW FIRM, PLLC
1134 Thomas Jefferson Road, Suite 1
Forest, Virginia 24551
Phone: (434) 616-2760
Fax: (434) 616-2761
strawgl@gmail.com

Counsel for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this the 2nd Day of March, 2018, the foregoing Motion for Voluntary Dismissal by Plaintiff Pursuant to Rule 41(a)(2) was filed with the Clerk of this Court using the CM/ECF system, which will send notification of such filing to the following:

C. Kailani Memmer (VSB No. 34673)
Victor S. "Dinny" Skaff, III (VSB No. 40054)
GLENN ROBINSON CATHEY MEMMER & SKAFF PLC
Fulton Motor Lofts
400 Salem Ave., SW, Suite 100
Roanoke, VA 24016
Phone: (540) 767-2200
Fax: (540) 767-2220
kmemmer@glennrob.com
vskaff@glennrob.com

Counsel for Defendants